
**COMMISSION MEETING
THURSDAY, NOVEMBER 16, 2000
DRAFT MINUTES**

Chair McLaughlin called the meeting to order at 1:30 p.m., at the Shilo Inn at Ocean Shores. Chair McLaughlin introduced the following attendees:

MEMBERS PRESENT:

**LIZ McLAUGHLIN, CHAIRPERSON;
COMMISSIONER and VICE CHAIR, GEORGE ORR;
COMMISSIONER CURTIS LUDWIG;
COMMISSIONER MARSHALL FORREST;
COMMISSIONER ALAN PARKER (arrived at 1:45);
EX OFFICIO MEMBER, SENATOR MARGARITA PRENTICE;
EX OFFICIO MEMBER, SENATOR SHIRLEY WINSLEY;
EX OFFICIO MEMBER, REPRESENTATIVE ALEX WOOD;
EX OFFICIO MEMBER, REPRESENTATIVE JIM CLEMENTS;**

OTHERS PRESENT:

**BEN BISHOP, Executive Director;
ROBERT BERG, Deputy Director, Operations;
ED FLEISHER, Deputy Director, Policy & Government Affairs;
CALLY CASS-HEALY, Assistant Director, Field Operations;
DERRY FRIES, Assistant Director, Licensing Operations;
AMY PATJENS, Manager, Communications & Legal Dept.;
JERRY ACKERMAN, Assistant Attorney General;
SHIRLEY CORBETT, Executive Assistant**

CHANGE IN AGENDA:

Chair McLaughlin announced that Agenda Item No. 6 on Thursday's agenda, the House-Banked Card Room Approval for Freddie's Club of Fife would be moved to the last item of business today, additionally, testimony will be limited to ten minutes per side.

1. NEW LICENSES, CHANGES, AND TRIBAL CERTIFICATIONS:

Commissioner Ludwig made a motion seconded by Commissioner Orr to approve the applications on pages 1-17 of the agenda packet. Vote taken; the motion carried with four aye votes. (Commissioner Parker was absent)

2. REVIEW OF FRIDAY'S AGENDA:

Amy Patjens, Manager, Communications & Legal Department, reported that a revised agenda had been distributed which included the addition of an Emergency Rule filing for Licensing fees and a rule on Licensing Fees. These rules do not reflect new or increased fees. The Emergency Rule addresses potential impacts due to I-722, and both rules ask that our licensing fees be reaffirmed. The rules up for final action this month are: Reporting Changes of Management, the Bingo Net Return Task Force Rules, New Marketing Schemes for Pull-Tabs, House Rules for Bingo, and the Emergency Rule Filing – Licensing Fees.

Two rules up for discussion and possible filing include the new rules added to the agenda relating to Licensing Fees, and Tracking Card Room Employees. Portions of the Bingo Net Return Task Force Rules and New Marketing Schemes for Pull-Tabs will be held over for another month. Ms. Patjens noted there are three alternatives associated with the Bingo Net Return rules. The last rules relate to Bingo house rules and the tracking of card room employees.

3. **MANUFACTURER REVIEW:**

Borgogne Et Grasset, Beaune-France:

Monty Harmon, Program Manager, Financial Investigations Unit, reported that Borgogne Et Grasset manufactures and distributes casino chips and casino equipment. They are applying for a manufacturer and distributor license. During the processing of their application, they purchased the Bud Jones Company, Inc. of Las Vegas, which manufactures and distributes casino games and supplies. Mr. Harmon affirmed The Bud Jones Company has been licensed and is in good standing in Washington State.

Borgogne Et Grasset is currently licensed in New Jersey, Mississippi, and by jurisdictions throughout Europe and the Far East. Criminal and personal history background checks were completed on all substantial interest holders, and no disqualifying information was noted. **Mr. Harmon** reviewed the source of funds for the purchase of Borgogne Et Grasset and identified the majority stockholders.

Based on the results of the investigation, staff recommended that licensure of Borgogne Et Grasset as a Class A manufacturer and Class B distributor be approved. No representatives were able to attend the meeting.

Commissioner Ludwig made a motion seconded by **Commissioner Orr** that Borgogne Et Grasset be approved as a Class A manufacturer and Class B distributor. *Vote taken; motion passed with four aye votes.*

4. **GROUP IV – QUALIFICATION REVIEWS:**

Boys and Girls Club of Whatcom County, Bellingham:

Monty Harmon, Program Manager, Financial Investigations Unit, reported this organization was formed in 1968. Their purpose is to inspire and enable young people to realize their full potential as productive, responsible, and caring citizens. Their service focuses on development of self-esteem in the youths through social, educational, health, vocational, leadership, citizenship and other recreational activities. The organization has been licensed since 1974 and has 4,897 active members. The organization provides youth team sports programs and youth activities such as computer education. They maintain a youth baseball and softball complex that consists of five regulation fields. In June of 2000, the organization began construction of a new 31,000 square foot youth center.

Mr. Harmon reported the organization achieved an 8 percent Bingo net return. Their percentage of gambling proceeds spent towards program services was more than the 60 percent required and they had less than 35 percent of functional expenses. They did not have excessive reserves. Mr. Harmon noted that while the Commission packet was being prepared, the organization had administrative charges pending. Those charges are just about settled and an understanding between the Commission and staff has been reached. Based on staff's analysis of the financial statements, narratives and other supplemental information, staff recommends the Boys and Girls Clubs of Whatcom County be approved as a charitable organization and be authorized to conduct gambling activities in the state of Washington. (Commissioner Parker arrived)

Lynn Templeton, Executive Director introduced himself and **Kevin Mallahan**, Bingo Manager.

Commissioner Forrest asked how they see the future of Bingo in Whatcom County. **Mr. Mallahan** responded that the Bingo industry in Whatcom County has been on the downside, partly due to the changes in the British Columbia gaming laws over the last three years. Currency and other competitive issues have also impacted the industry. Mr. Mallahan predicted that within the next year or so, the games would continue to struggle. **Mr. Templeton** noted the security delays at the border, particularly at the Blaine crossing, has had a negative effect on their games.

Chair McLaughlin pointed out that the non-gambling revenues changed considerably from 1998 to 1999. **Mr. Templeton** responded that the organization has been undergoing a capital campaign in order to build the 31,000 square foot new facility which is about 65 percent complete at this time. They are also reorganizing their boards, advisory boards, and managers who staff their local units; specifically to replace the declining Bingo revenue stream.

Commissioner Forrest made a motion seconded by Commissioner Ludwig to approve the Boys and Girls Clubs of Whatcom County as a charitable organization, to be authorized to conduct gambling activities in the state of Washington. Vote taken; the motion carried with five aye votes.

Yakima Greenway Foundation, Yakima:

Monty Harmon, Program Manager, Financial Investigations Unit, reported this organization was formed in 1980, and their purpose is to conserve, enhance and maintain the Yakima Greenway as a continuing living resource for future generations. They have been licensed since 1992 and have 800 active members. The organization owns and maintains over 10 miles of paved pathway. They have three parks, two fishing lakes, and four river-access landings. They also own and maintain protected and natural facilities. The facilities are open and free to the public year around. The Foundation's major fundraising and other events include a gap-to-gap relay race, A Case of the Blues and All That Jazz festival. In February, they have a Winter Walk. On Earth Day, there's a celebration and in July and August, they host a series of free concerts. The Foundation recently created a program known as Greenway Eagle. The intent of that program is to educate youth in the knowledge and appreciation of the natural environment.

For year ending December 31, 1999, the organization was required to have a 7 percent return under the moratorium. The organization only achieved a 3.8 percent return. In May of 2000, they submitted a request to the Commission asking for a waiver, which was permitted. The percentage of gambling proceeds spent towards providing program services was more than 60 percent and their support service expenses were in compliance by being less than 35 percent of their functional expenses. The organization did not have excessive reserves at the end of the year. As of November 14th, there were no administrative actions pending. Nothing came to staff's attention during the review that would indicate that Yakima Greenway Foundation is not qualified as a nonprofit organization for purposes of conducting gambling activities. Staff recommends they be approved as a charitable organization and be authorized to conduct gambling activities in the state of Washington.

Ms. Angie Esponsia, Bingo Manager, introduced herself. **Commissioner Forrest** asked how long they would plan to continue Bingo at a loss. Ms. Esponsia said that as of this month they are doing very well, because they are entering the winter months. Commissioner Forrest asked if there is any reason to believe there is going to be any change in the near future. Ms. Esponsia advised that as of January 2000, the organization leased their snack bar, which brought their expenses down approximately \$30,000, and they reduced staff. **Chair McLaughlin** pointed out that in 1999 the organization was in the red by \$200,000 and verified that the Bingo is now at a 3.8 net return. Ms. Esponsia affirmed. Chair McLaughlin observed that while they are not in compliance, they are not losing money.

Commissioner Ludwig recalled that at a previous meeting, another nonprofit licensee in the area moved into some of the days of their operation. **Ms. Esponsia** affirmed. Commissioner Ludwig noticed that the 1999 statistics show a loss on Bingo net income, but shows almost \$90,000 net income on other gambling. He asked if that was punchboards and pull-tabs. Ms. Esponsia said it was Bingo, punchboards and pull-tabs. Commissioner Ludwig advised that the marketing situation in Yakima has been tough, particularly for this organization in view of the fact of the other licensee that's moved into their time slot, and while they show a loss for this year, he believed they are going to improve.

Commissioner Ludwig made a motion seconded by Commissioner Forrest to approve the Yakima Greenway Foundation as a charitable organization and to be authorized to conduct gambling activities in the state of Washington. Vote taken; the motion carried with five aye votes.

5. **GROUP V - QUALIFICATION REVIEW:**

Puget Sound Music Society, Tacoma:

Monty Harmon, Program Manager, Financial Investigations Unit, reported this organization was formed in 1986, and has been licensed since 1990. Their purpose is to form, maintain and promote musical organizations and groups through performances and education. They provide services through their concert and swing band and a music education program. The music education and grant programs have been suspended during 1999 due to financial constraints.

This organization has a Class I license for Bingo and their required net return is 10 percent, not considering any moratorium issues. The net return achieved was 12.6 percent. The percentage of gambling proceeds spent were in compliance by being more than 60 percent, and the support services were less than 35 percent of functional expenses. The organization did not have excessive reserves. As of August 1, 2000, there were no pending administrative charges against the organization. Nothing came to staff's attention that would indicate that Puget Sound Music Society is not qualified as a bona fide nonprofit organization for purposes of conducting authorized gambling activities. Staff recommends they be approved as an educational organization and be authorized to conduct gambling activities in the state of Washington.

Commissioner Orr made a motion seconded by **Commissioner Forrest** to approve Puget Sound Music Society as an educational organization and be authorized to conduct gambling activities in the state of Washington. *Vote taken; the motion passed with five aye votes.*

6. **HOUSE-BANKED CARD ROOM PHASE II REVIEWS:**

The Grove Tavern, Everett:

Cally Cass-Healy, Assistant Director, reported that The Grove Tavern is a commercial restaurant, lounge, and card room. The business is incorporated with 50.5 percent of the outstanding shares held by Walter Leavitt and 49.5 percent held by David Dotson. Neither David Dotson nor Walt Leavitt holds any interest in any other gambling facility. The licensee is currently operating 10 tables including one Let It Ride, one Fortune Pai Gow, one Spanish 21, one Lucky Ladies Blackjack, two Blackjack tables, and four Poker tables, three of which have player-supported jackpots.

A comprehensive investigation was conducted, including review and observation of key operating departments and a review of gaming and organizational records. In addition, the Everett City Clerk's office was contacted and confirmed The Grove had two outstanding notes payable for first and second quarter gambling taxes. The licensee is making monthly payments and is meeting the terms of the notes. Everett Police Department was contacted to determine local and departmental impacts from house-banked gambling at The Grove, and the police department reported they had not seen significant impacts due to the house-banked card room operation. All violations noted during the review were ultimately corrected. Staff recommends approval for Phase II wagering limits.

Commissioner Forrest noted the impressive list of violations and asked if Ms. Cass-Healy was satisfied the violations have been or are in the process of being corrected. **Ms. Cass-Healy** affirmed that they had been corrected, but that staff had to make many visits to the establishment.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to approve the Phase II Review of The Grove Tavern from Everett. *Vote taken; the motion passed with five votes.*

7. **VOTE ON TRIBAL/STATE COMPACTS:**

Ed Fleisher, Deputy Director, reported two compacts were before the Commission for their recommendation to the Governor as an amendment to the Lummi compact, and a compact for the Stillaguamish Tribe. Both of these are similar to language the Commission has approved more than once within the past year.

Chair McLaughlin announced that Ex Officio members of the Senate and the House do vote on compacts with the five Commission members.

Lummi Nation:

Mr. Fleisher reported that the Lummi Nation had a casino operation in the past and a compact with the state of Washington. They operated their casino in the Bellingham area from 1991 until August of 1997, at which time they closed. They are before the Commission asking to have an amendment (in the form of Appendix X) added to their compact to allow them to use the tribal lottery games in their casino, which they hope to reopen sometime in the near future. At previous Commission meetings they discussed the Tribe's past due regulatory fees which were a part of the negotiations with the Tribe for Appendix X. There is now a signed Memorandum of Understanding between the Gambling Commission and the Tribe wherein they agree to pay their past due regulatory fees prior to any reopening of the casino. The Appendix X before the Commission is virtually identical to the other Appendix X's approved in the past with two minor changes. One change relates to the administrative or regulatory fees, the Tribe wanted to call these administrative fees, not regulatory fees, which is consistent with the language that was used in their compact. Staff had no objections. The second change relates to the payment of the one- percent impact fees. The original compact with the Lummi Tribe, who had a gaming operation prior to the passage of IGRA, had a provision in it that the community impact fees for their gaming tables, would not be required to be paid as long as their casino remained at their previous location. **Mr. Fleisher** explained that the agency did not change that provision in their compact, but, in Appendix X, they agreed the community contribution and charitable donation fees that come out of that one percent will be paid by the Tribe regardless of the location of their casino. It's an exception to the rule, and their underlying compact. **Commissioner Forrest** verified that before they would be able to use the machines, the tribe would have to pay their back fees. Mr. Fleisher affirmed and noted that is the point reaffirmed in the Memorandum of Understanding. **Representative Clements** asked what the total was for their back fees and their administrative. Mr. Fleisher replied almost \$48,000. Representative Clements asked about the protocol for making the payments. Mr. Fleisher said the Memorandum of Understanding is clear that they will pay the back fee prior to the Commission's authorizing the reopening of the casino.

Harry Johnson, Attorney for the Lummi Nation, introduced himself and **Ray Morris**, Vice-Chairman of the Tribe. **Commissioner Ludwig** asked if the Tribe planned to move their facility closer to I-5. Mr. Johnson affirmed it was under consideration, and if it is moved, it will most likely be along the northern edge of the reservation, located approximately halfway between Ferndale and Bellingham (Exit 260 off the freeway).

Representative Clements asked why the other casino went out of business and if there were any arrears or outstanding debts regarding the two- percent contributions. **Mr. Johnson** explained there were "triggers" in the previous compact. One was whether alcohol was served, and the Lummis were very clear that there would be no alcohol served at the Gooseberry Point Casino. Near the end, alcohol was served for a short period of time, and that triggered the contributions. The other trigger was moving away from the Gooseberry Point location, which will trigger new contributions in the future, but none from the past.

Commissioner Ludwig made a motion seconded by **Commissioner Orr** to approve the proposed compact with the Lummi Nation. *Vote taken; motion carried with eight votes.*

Stillaguamish Tribe of Indians:

Ed Fleisher, reported that several months ago the Commission and the Governor approved a compact with the Stillaguamish Tribe limiting them to their allotment of tribal lottery machines, and not allowing gaming on the Stillaguamish Reservation. This was at the request of the Stillaguamish Tribe because they had no plans to conduct gaming on the reservation. When the document went to the Secretary of the Department of Interior for approval, objections and concerns were raised about a tribal gaming compact that didn't allow gaming on the reservation. The Secretary of the Department of Interior requested the Tribe withdraw the compact. At that point the Tribe contacted the agency and asked to withdraw the proposed compact, and to negotiate a complete compact. Those are the documents before the Commission today. The language is virtually identical to the Sauk-Suiattle compact approved a few months. It provides for up to 52 gaming tables in their Phase II operation, \$500 betting limits in the Phase II operation, in one location, as in other compacts.

Commissioner Forrest questioned if it was normal for the Secretary of the Interior to remand a compact already approved by the Governor. **Mr. Fleisher** said that under the Federal law, there are three requirements before a compact is effective: a signature by the Tribe, a signature by the Governor, and approval and publication in the

Federal Register by the Secretary. Actually, the Secretary's approval is required before a compact goes into effect and the effective date is not until after publication in the Federal Register. Mr. Fleisher noted it is unusual for the Secretary's Office to raise objections to a compact and deferred to the Tribe's legal council.

Mary Prevost, Legal Council with the Stillaguamish Tribe introduced herself and introduced **Eddie Goodrich Jr.**, Secretary for the Tribe. **Commissioner Ludwig** asked where the Stillaguamish Tribe Reservation was located. **Mr. Goodrich** said they do not technically have a reservation, but are located 10 miles north of the Tulalip Tribe off I-5 in Arlington. Commissioner Ludwig asked if they currently have plans to operate a casino. Mr. Goodrich said that currently they don't, they still plan to negotiate leasing their machines to the Tulalip or other neighboring tribes. The Secretary felt it wasn't in the best interest of the Tribe to have the limited compact.

Ms. Prevost clarified the Secretary of Interior's role and said they had approved one of the compacts from Washington State that was essentially the same as the Stillaguamish compact, which only allowed leasing the gaming allocations. Staff from the office of the Secretary of Interior apparently raised objections at that time, however, the Secretary of Interior decided to approve the compact. They raised objections again this time because they felt it was more appropriate to have the entire compact to avoid controversy. **Chair Ludwig** said that based on the information presented, he perceived that the situation for the Tribe was no different than it was at the time the Commission voted on the limited compact.

Chair Ludwig made a motion seconded by **Commissioner Forrest** to approve the proposed compact between the Stillaguamish Tribe and the state of Washington.

Rep. Clements asked for clarification on what the Commission was approving. **Mr. Fleisher** explained the Commission is considering approving a full compact with the Stillaguamish Tribe. This compact is virtually identical to several compacts that have been agreed to by the state and approved by the Secretary of the Interior. The full compact exists (behind Tab 2 in the agenda packet) and a vote to approve would be a recommendation to forward the compact to the Governor for his approval. Assuming the Tribe approves it as well, the final step is approval by the Secretary of the Interior. **Senator Prentice** reported that the Senate Committee had the Tribe before them when they met and specifically asked those questions. Her understanding was that the Secretary of the Interior felt that just to have the narrow compact was too limiting – that they should not limit themselves. They still intend to have their Farmer's Market and their cultural center. She noted they made a very good impression on the Senate Committee. *Vote taken; motion passed with eight aye votes.*

8. **REQUEST FOR AN ORDER TO VACATE DEFAULT ORDER:**

Amy Patjens, Communications and Legal Department, noted that last month staff asked that a default order be issued against Mr. Braginskiy who was a card room employee at Parker's Sports Bar and Casino. Charges were sent by certified mail and no response was received. She explained that when someone doesn't respond to charges after service, then staff could come forward and ask for a default order. Since the last meeting, staff discovered that Mr. Braginskiy did not have a valid license; therefore, there was no license to revoke. Normally, staff would have caught this and this would not have been brought forward. Additionally, Mr. Braginskiy, through an attorney, filed a motion to vacate the default order. Based on the Administrative Procedures Act, that is something they can do. If they receive the order - within seven days, they can request the order be vacated, and state the grounds that they are relying on. Staff received such a request from Mr. Braginskiy's attorney, who explained that Mr. Braginskiy had moved and the papers had not been forwarded to him. He mistakenly thought that his employer would have updated the Commission with his new address. The motion asked that a hearing be set for the case. Staff sent a letter to Mr. Braginskiy and his attorney, a copy of which is in the Commissioners' materials, explaining the error and to affirm staff would be asking the Commission to vacate the order. Staff also explained that if Mr. Braginskiy applied for a license, the director would likely deny the application based on the circumstances, but that he would have a right to a hearing. Therefore, if the Commission enters an order to vacate the order, Mr. Braginskiy would be getting what he wanted, which would be a hearing should he reapply for a license. **Mr. Ackerman**, Assistant Attorney General, affirmed that staff is attempting to clear the record, but to correct the procedural defect, the Commissioners need to vacate the order.

Commissioner Orr made a motion seconded by Commissioner Forrest to vacate the default order for Mr. Braginskiy. Vote taken; motion carried with five aye votes.

Chair McLaughlin called for a recess at 2:40 p.m. and called the meeting back to order at 2:55 p.m.

9. **HOUSE BANKED CARD ROOM APPROVALS:**

Freddie's Club of Fife, Fife:

Artis Collins, Licensing Manager, reported that Lakeside Casino; LLC d/b/a/ Freddie's applied for a license to operate 15 tables of a house-banked card game. This organization was formed as a limited liability company in 1998. The membership consists of Eugene Chip Mudarri who owns 63.25 percent of the membership share and George Skip Downing with 36.75 percent of the membership shares. They do not presently hold a license with the Gambling Commission. Staff conducted a criminal and personal history background investigation of the substantial interest holders and initiated and completed a financial investigation of both the LLC and individual members finances. No disqualifying information was found. Staff also conducted an on-site pre-operation review and evaluation in accordance with the rules of the Commission on October 24, 2000. The applicant was in compliance.

He introduced representatives from Freddie's Club who were available for questions: Chip Mudarri, Skip Downing, and Mr. Bob Tull. **Chip Mudarri** said he was a majority owner of Freddie's Club of Fife and happy, nervous and excited. **Skip Downing**, said he was an architect normally and is looking forward to being a casino owner -- the Club turned out beautifully, and they hope it is a real addition to the City of Fife. **Commissioner Ludwig** asked if either of the owners were Native Americans. They responded that they were not.

Bob Tull, Attorney for Freddie's Club, said the company has currently invested in excess of \$8.6 million at this site since acquiring the property. At this moment, there are 188 employees hired, on the payroll, and ready to go to work. Under the system that exists in the state of Washington, they can only be here if this facility, its people, its operational procedures, and all of its other necessary appurtenances are deemed by the staff as ready to go forward. Mr. Tull asked that the staff recommendation, when issued, be affirmative. He affirmed there are some other questions that have been raised, notably by the Puyallup Tribe of Indians. One of their comments had to do with licensing involving the late Fred Steiner. Mr. Tull reported the interest of Mr. Steiner's estate in this LLC was purchased, and it is no longer involved. The LLC has a licensing arrangement with the owner of the intellectual property right to the name Freddie's Club.

Commissioner Parker, asked when the interest was purchased. **Mr. Mudarri** responded it was when they executed the original LLC with Fred; it was part of the LLC agreement. **Mr. Tull** asked if Commissioner Parker was talking about the buy/sell or the intellectual property. Commissioner Parker indicated the purchase of Fred's interest. Mr. Mudarri clarified it was approximately 30 days ago. **Mr. Tull** affirmed with Mr. Gary Faull, the personal representative of the estate, on Monday, that that purchase had been consummated and that the estate has no interest whatsoever in this limited liability company. Commissioner Parker asked if everything is ready to go, and if they were waiting to operate. Mr. Mudarri affirmed that everything is ready to go, pending the approval of the Commission. **Mr. Downing** affirmed.

Ed Fleisher, Deputy Director, offered comments on the issue involving this license contained in a letter the Commission received from the Chair of the Puyallup Tribal Council included the handout packet. He noted that state law requires the Commission to grant a license to any qualified licensee who has met the state qualifications when they come before the Commission. After consultation with the Commission's legal counsel, staff is in disagreement with the Tribe's claim that granting this license would be a violation of their compact. Based on the advice they have received over the years, staff believes the state has jurisdiction to grant gambling licenses on non-trust lands. The reasons are more fully discussed in a 1997 opinion from the Commission's Attorney General, Jon McCoy, also included in the Commission's packet along with a memo regarding the land claim settlement agreement from 1988, which the Puyallup Tribe entered into with the state, Federal, and local governments. Letters from the Samish Tribe and the Stillaguamish Tribe were distributed, as well as a May 8, 1996, memorandum from former Director Frank Miller. Staff recommends the Commission proceed with this license with the understanding that the state will fully cooperate and act in good faith with the Tribe through the dispute resolution process, should

they choose to continue with the dispute resolution process, and stand by the results of that process when it is completed.

Commissioner Parker asked what the dispute resolutions were. **Mr. Fleisher** addressed page 22 of the Puyallup Tribal compact, which has two sections on remedies for breach of compact violations. The first is Section 11 and deals with injunctions and provides that if the tribe believes the state is in breach or default, they may seek injunctive or other relief in a court of competent jurisdiction. That is the formal judicial process. The second process within the compact is in Section 12, which provides for a dispute resolution mechanism. The dispute resolution mechanism involves both good faith negotiations, mediation, and it involves arbitration that may or may not be binding on the parties. In a few situations, the binding version of arbitration is required by the compact. In other cases, it's up to the parties whether they want the arbitration to be binding. The compact says the decision of the arbitrator shall be final and can be appealed only if agreed to by the parties in writing prior to the arbitration. It is also clear that if the parties are unwilling to agree to a final and binding arbitration by the arbitrator, they may proceed to litigation in the courts – that arbitration does not cut off litigation if the dispute is handled in that order.

Commissioner Parker asked if an Indian tribe hypothetically decided to pursue its remedy by seeking an injunction in the court, what does that mean, given the well-known decision of the Supreme Court about the limitation on the ability of IGRA to have waived the sovereign immunity of the state. **Mr. Fleisher** said that ultimately it is probably a question for the Attorney General of the state of Washington. In the compact, the state of Washington did agree, as in all their compacts, to submit itself to a court of competent jurisdiction for any injunctive or other relief brought by a tribe, and the compact does not say what a court of competent jurisdiction is. Certainly the state would agree that is state court. If the action is brought in Federal court, using the Eleventh Amendment defenses, Mr. Fleisher advised that he was unsure what the state's position would be, a decision would have to come from the Attorney General's Office, not this Commission. The Commission could certainly express their views. Commissioner Parker noted that if the state attorney general takes the position that there is no jurisdiction in the Federal courts over this dispute, then the dispute provision of the compact is essentially rendered ineffective. Mr. Fleisher affirmed if that was the decision of the attorney general, then the tribe would be forced to make a decision whether to bring the action in state court. Mr. Fleisher did not believe the state would have any grounds to object to jurisdiction in state court. Commissioner Parker said it would only apply to Federal court. Mr. Fleisher believed Eleventh Amendment defenses only apply in Federal court. **Jerry Ackerman**, Assistant Attorney General, advised that he is not prepared at this point to concede any defense that may be available to this Commission. Commissioner Parker said that if the state wanted to use the dispute resolution provision in the tribal compact, there is nothing on the other hand that would limit the Commission acting as the agency of the state from agreeing to go into court. Mr. Ackerman asked if the question is, could the state waive sovereign immunity if it chose to do so? Commissioner Parker asked if it could interpret its agreeing to a compact as having constituted a waiver. Mr. Ackerman advised that normally, sovereign immunity is waived by the Legislature -- and that hasn't take place. He noted that he could not provide a full-scope answer at this time.

Commissioner Parker asked if the settlement agreement between the Puyallup Tribe and the state of Washington that was ratified by Congress in 1988 contained a waiver. **Mr. Fleisher** affirmed and noted the language in the settlement agreement regarding dispute resolution is quite different from the language in the compact. The settlement agreement, which is an attachment to the Puyallup compact, has language on settling disputes that arise under the settlement agreement, in which both parties agree to the jurisdiction of the Federal court.

Chair McLaughlin asked if the Commission chose not to approve a license today for Freddie's, if there would be no dispute resolution with the Puyallup Tribe. **Mr. Fleisher** said he could not speak for the Puyallup Tribe, whether they would go forward with their dispute, either on this ground or on other Washington State Gambling licensed activities occurring in the same area. **Commissioner Forrest** believed that one could hazard a guess that Freddie's might not be satisfied with such a decision. **Mr. Ackerman** noted the letter in hand from the Tribe has already invoked dispute resolution. It also, in more than one place, says in so many words that if this Commission does not accede to their request, they will bring a legal action against the Commission. That would very likely come into play in a lawsuit, and to preserve the attorney-client privilege, Mr. Ackerman recommended further discussion in executive session. He suggested hearing from the Puyallup Tribe then going into executive session if they feel it is appropriate. Mr. Fleisher said the cite regarding consent to sue was found on page 33. **Representative Clements** asked how Freddie's got through an \$8 million construction project and all of sudden there is a dispute resolution.

Chair McLaughlin opened the discussion regarding the licensing Freddie's of Fife. She noted each side would have a total of ten minutes each to present their case.

Bob Tull affirmed that his client starting flying a banner announcing the imminence of this facility in May, and the investment to date is \$8.6 million. He offered his opinion that nothing in the compact restricted the state and the Gambling Commission's authority or responsibility with respect to licensing qualified people at qualified and appropriate locations. He believed this is a situation that may well be complicated by other views. He believed the Commission had other methods available to them and he believed in reviewing this through the mediation process, with arbitration if necessary. Mr. Tull indicated the Tribe has identified it as being a step they will undertake. He noted his client learned of this issue at the end of last week. He believed that with the visibility of the project, and the extent of investment, it would be grossly inequitable to delay an otherwise fully-qualified licensee from going forward, particularly where the very complicated issues, do have methods available to the state and to the Tribe for resolution.

Commissioner Parker asked Mr. Tull whether he believed his client had a right to file a lawsuit against the Commission if the license is denied. **Mr. Tull** affirmed. In his view it would be a license denial that was in complete contravention of the record. The record before the Commission is the staff evaluation, process and report - it absolutely supports the qualifications of these individuals, the preparedness of their facility, and the readiness of their personnel and internal controls. They are entitled under the law of the state of Washington to a license at this point. Commissioner Parker asked Mr. Tull if he would interpret the Commission's authority as being ministerial rather than discretionary -- if conditions were met, that essentially the Commission must approve a license. Mr. Tull affirmed that is the law in Washington, for licensing gambling. The purpose is to make it not subject to political influence, not subject to favoritism and not subject to any other type of undue pressure. Mr. Tull said that if upon a careful analysis the licensee proves the source of their money is pure; that their people are without any suspicions in terms of their character and integrity, if they satisfy the specific regulatory requirements for that type of activity and facility, then they are absolutely entitled to a license. That has been the approach of this agency historically. He noted that the Commission, about a year and a half ago, decided that it would not follow its normal licensing course. Normally this facility would have received a temporary license from the director and there would have been a routine, ministerial review. The awkwardness of this proceeding was something that was discussed at the time, but the Commission, because of the evolving nature of the industry, wanted to keep a closer look on things. It was not to change the fundamental licensing approach, but to make sure that Commission stayed fully informed. **Chair McLaughlin** asked if Mr. Ackerman agreed with what he had just heard. **Mr. Ackerman** said he would defer this for discussion in executive session.

Delores Cheichi, Executive Director, Recreational Gaming Association, noted the establishment has 188 employees ready to go to work; they have gone through the approval process, everyone is licensed, and this issue will end up in court regardless of the Commission's action. As the attorneys have stated, the statute is clear on this issue. Ms. Cheichi announced the RGA supported the Commission's action to approve the license.

Chair McLaughlin asked if there were any other spokespersons wishing to speak on behalf of the approval of Freddie's Club. There were none. She then called on the spokespersons against the approval.

Bill Streud, Vice Chairman of the Puyallup Indian Tribe, said it is evident there is a difference of opinion with respect to the interpretation of the compact between the state of Washington and the Puyallup Tribe of Indians in regards to the licensing of Freddie's Club on the Puyallup Reservation. This difference of opinion constitutes a dispute. Under the language contained in the compact, this dispute has a process for resolution that must be followed. The compact acknowledges and seeks to improve the government-to-government relationship between the parties by recognizing and acknowledging the unique jurisdictions of the two governments. These differences sometimes come into conflict. He believed that is why there is an internal dispute resolution process defined within the document. That process is designed to facilitate communication and prevent an impasse. However, in this case the Tribe was unable to raise their concerns earlier because the Commission failed to give actual notice of what they were intending to do. The Tribe has indicated through written notice, as spelled out in the compact pertaining to gaming within the Puyallup Tribal Reservation, that a dispute has occurred. The Tribe believes the licensing of Freddie's Club will violate the letter and intent of the compact. Mr. Streud said they were not here to establish the

validity of the argument. They were here to recognize that a legitimate disagreement of interpretation has evidently occurred. Some may presuppose that negotiations between the two governments will not be fruitful and therefore are not necessary. That is not fair or respectful to either party. It is the Tribe's hope that by sitting down together, they will be able to work through this challenge together. He believed out of respect for the government-to-government relationship that exists, and the necessity to cooperate in order to reduce conflicts and promote good will, the Commission is honor bound to follow the procedure they agreed to in the compact. If we ignore the purposeful process built into the compact process, there will be no talking -- instead everyone will be scheduling time with their respective attorneys and filing motions. This is not the preferred method. Alternatively, the Tribe wants to discuss the perceived differences in interpretation and work through their respective positions with the Commission until an equitable resolution can be reached. Mr. Streud pledged they would work in good faith toward a conclusion if the Commission also pledged to do so.

Mr. Streud emphasized that issuing a license before the dispute resolution process has been completed is not a demonstration of good faith and is a poor start at trying to achieve an expedient resolution. He urged the Commission to take the time to talk with the Tribe, as the compact calls for, prior to administering an action that would jeopardize the integrity of the compact and open a can of worms that neither party can fully anticipate. The Puyallup Tribe of Indians urges the Commission to engage in a dispute resolution process as outlined in the compact. This Commission not only has the obligation and responsibility to enforce the gaming laws of the state of Washington, but also the obligation to comply with the terms of the agreement executed by the Governor of this state and the Puyallup Tribe. **Commissioner Ludwig** said he recognizes there is a dispute about interpretation, and asked what Mr. Streud's position is regarding a violation or breach of the compact. He asked how the Commission taking a course of action today would violate it. Mr. Streud asked the tribal attorney to answer Commissioner Ludwig's.

Carlos DelaSantos, Attorney, said he felt somewhat constrained because this could end up in litigation. He noted the spirit and intent of the compact was that before any gaming activity exceeded the limits initially agreed upon in this compact, it would be talked about. There is a requirement that requires an amendment to the compact before gaming activities on the Puyallup Reservation exceed the limitations to which they had already agreed. If the Commission takes the step to expand gaming activities beyond these limitations, prior to complying with the proper terms to amend the compact, let alone giving them notice for consultation to resolve a dispute as to the proper parameters to deal with this particular issue -- that is a breach of the promise. Mr. DelaSantos said that in the spirit of cooperation, they want to discuss the differences outside of a court in an effort to reach a resolution.

Commissioner Ludwig questioned if Mr. DelaSantos was saying that to issue a license to owners of Freddie's Club at Fife would be a compact amendment? **Mr. DelaSantos** said he would look at what was required of the Tribe. When the Tribe entered into negotiations with the state, the position of the state was that "we already have a document that we have executed with other tribes, and you must accept this or sue us." The provisions that were presented to the Tribe in this compact are that this body, as the negotiators for the state, prepare it. He said he is dismayed with regard to whether or not there's been a waiver of sovereign immunity by the state in order to conclude a final resolution of the dispute resolution process. Had they known at the time they were presented this compact that there may be a question as to whether or not the state was ultimately going to fight them about the resolution process, they may not be sitting here today talking about a compact. Mr. DelaSantos was dismayed to hear that where there is clear language, if this reached the arbitration level and there is no prior agreement, that it would be final and unable to be appealed. Either party can seek resolution of that issue in the U. S. District Court. He also noted that in his opinion, the court of competent jurisdiction is the United States District Court.

Commissioner Ludwig said he wasn't personally concerned about the immunity issue, he was more concerned about the breach of the compact. **Mr. DelaSantos** advised the compact has a specific limited scope of gaming. It states there will only be one Class III Casino on the reservation, and must be owned and operated by the Tribe. The only thing the compact respected was government-operated gaming. Now, the state wants to change that -- they want to open private ownership of the gaming operations. He believed that to now change that, without properly amending the compact is a breach, and is moving away from government's requirement that the gaming operation be government-owned and operated. Commissioner Ludwig hoped Mr. DelaSantos would agree the applicants are the ones that want the license, not the state. Commissioner Ludwig affirmed that based on the answers of the prospective operators, they're not Native American, and this would therefore be a non-tribal gambling operation, if

they were granted a license. Commissioner Ludwig clarified that Mr. DelaSantos was attempting to say the compact, in his opinion, covers non-tribal gaming. Mr. DelaSantos affirmed, noting that it covers all gaming activities within the reservation boundaries regardless of who operates it. Commissioner Ludwig asked where that is stated in the compact. **Mr. DelaSantos** said it appears on the first page of the compact -- under the declaration of policy and purpose, which sets out the underscoring tenet of the compact. He thought this might clear up what the state recognized with regard to the jurisdictional authority of the Tribe over all gaming activities on the reservation. He pointed out this language was drafted by the Commission, not the Puyallup Tribe. The Indian Gaming Regulatory Act provides for the negotiation of compacts between states and tribes to govern the conduct of Class III gaming. Indian tribes have the exclusive right under IGRA to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a state which it does not as a matter of criminal law and public policy prohibit such gaming activity. Mr. DelaSantos reiterated this is clear recognition, and noted it says "exclusive right to regulate gaming." IGRA provides a framework for the operation of gaming. **Commissioner Ludwig** asked if the term used was "on Indian lands." **Mr. DelaSantos** affirmed. He noted that Indian lands defined in the compact incorporates the definition of Indian lands found in IGRA, and the definition in Indian lands found in IGRA is "all lands within the reservation, including fee lands." He said there is no distinction and it's a very clear statement -- all lands within the reservation boundaries. He said there was a question about the settlement agreement. While it is true that after many years, the Tribe waived millions of dollars of land claims in order to reach a cooperative agreement among all the jurisdictions within the reservation boundaries, what they are asserting is not tribal law -- it is Federal law -- the Federal law that required them to enter into this compact.

Senator Winsley read from a memo dated May 8, 1996 written by Frank Miller, director of the Gambling Commission, and under Section 3(f), that the Puyallup Tribe intends on opening a temporary facility next to its Bingo operation -- and that would be the Emerald Queen location. She asked if the Emerald Queen is sitting on fee-owned lands or reservation land. **Mr. DelaSantos** said they are sitting on trust lands within the reservation. Senator Winsley continued reading that the Tribe may locate a facility on trust lands contiguous to the reservation if both parties agree. Section 27.19 of the IGRA provides that an Indian tribe may negotiate for the conduct of gaming on trust lands within or contiguous to the reservation acquired after 1988 without first receiving specific governor approval. She asked if she recalled correctly, that besides their reservation land, if they also had 23 acres of fee-owned land that was part of the compact. Senator Winsley indicated the Puyallup Tribe has been interested in building a new destination-type casino on the land that is part of the 23 acres along I-5, west to highway 99, and inquired if that area is within the reservation or fee-owned land? Mr. DelaSantos said he believed that area is within the reservation. Senator Winsley asked if this is the site they are considering for a permanent place. Mr. DelaSantos said letters have been sent to all the jurisdictions indicating that the Tribe was looking to move its casino, primarily because the land the Emerald Queen is located on was land they obtained in the land settlement agreement. The primary use for that land is for a deep-water port facility -- it was never intended to be a casino. The language in the compact specifies that initially the Tribe would open one gaming facility on the site. They let it be known this was going to be a temporary site and that ultimately they wanted to develop the property into a deep-water port facility. The opportunities to develop the property are coming forward, which necessitates moving the casino facility somewhere else within the reservation. If the argument was made that IGRA does not apply to fee lands in the reservation and it is only IGRA that requires the Tribe to have a gaming on trust lands; and we accepted the argument that the state has made, the Tribe would then be free to put a gaming facility on fee lands. Senator Winsley rephrased her question and asked if besides the land the Tribe owns that's reservation land, don't they also have first rights to 23 acres as part of the compact. Mr. DelaSantos said he was not sure about the 23 acres. There is a provision in the settlement that talks about a number of acres they can declare for recreational purposes, however, that property has nothing to do with this, they haven't made a selection of those properties.

Representative Clements asked what type of notification the Tribe felt they should have been given, assuming the Tribe knew what was going on inside the boundaries of this property. Representative Clements felt that the Commission's actions on Freddies through a chronology of time was not done in such a fashion that tribal members would not understand that there was in fact something happening. He asked if they are required to write a specific letter. **Mr. DelaSantos** affirmed. He believed that when the Commission received the application and looked at the location, and once they identified the location was within the boundaries of Indian reservation, they were at that point obligated to look at the compact to determine whether the activity was permissible. That meant not just making a one-sided opinion, but also seeking the Tribe's view. Representative Clements asked if there was any obligation on the Tribe's part when they see these types of actions, to come before the Commission and question

them before there's an \$8 million construction project completed and 150 people ready to go work. He asked if the Tribe is not obliged to have any responsibility. **Mr. DelaSantos** affirmed.

Commissioner Parker asked Mr. Streud if they had an estimate on the monetary impact of Freddie's being opened in their area. **Mr. Streud** responded that the monies from their casinos that go to social services and various programs, such as education, could be impacted by this decision, and it could be a million or more dollars. **Mr. DelaSantos** noted the Seattle PI quoted some figures with regard to the Freddie's Club operated in Renton and he believed they indicated the amount was about \$5 million dollars. If this casino is anywhere as successful as that, it could be a \$5 million impact.

Senator Winsley noted that at one time there was a proposal to have horse racing in Fife. She asked if that land was being considered for that purpose, and was it on the reservation. **Mr. DelaSantos** said it was, and they were in consultation with the Fife Thoroughbred Racing Association to build a joint project. Senator Winsley asked him to estimate the distance from that land to Freddie's site. Mr. DelaSantos said it was about two miles.

Joe Beck, Executive Director, Washington Indian Gaming Association, reported another nation would also like to speak to this issue, in support of the Puyallup Nation regarding this issue.

Frank Peterson, Quinault Indian Nation Gaming Commission, advised that he was present to express his concerns on the proposal to license a non-Indian Class III gaming facility on an Indian reservation. He said the proposal, if accepted, would not only harm Indian people, but it would also harm the relationship between the tribes and the state. He reported that a reservation is more than just another tract of land, it is the only place where generations of Indian people have been allowed to live, work, and raise their families free from the unwelcome intrusion of the majority culture. It is a place where their ancestors reserved for themselves and future generations the right to live by their own customs, traditions, and laws. It is their home. To allow a non-Indian to operate a casino on the reservation is an unwarranted and unjustified invasion into that home. He noted that for generations, Indian people have suffered economically far more than other people in this country. A tribe's ability to operate a casino on its lands has brought with it the dream of an end to that economic suffering. A non-Indian gaming facility which would inevitably compete for the scarce reservation resources will kill that dream and the possibility that Indian people will finally be able to raise themselves out of the economic suffering they have silently been forced to endure. The harm to Indian people would be immeasurable. Mr. Peterson urged that like good neighbors everywhere, Indian tribes and the state of Washington must respect each other and refrain from infringing on each other's lands. It would be an unconscionable infringement on a neighbor's home for the state of Washington to allow a non-Indian to operate a casino on a reservation. There is a real possibility that such an act will damage for generations to come the good will and cooperative spirit that the leaders of the state of Washington and Indian tribes have worked so hard to establish. On balance, the ability of a non-Indian to open a gaming facility on a reservation does not outweigh the trust and good will that took years of hard work by dedicated people to build. Mr. Peterson asked the Commission to make the right decision -- to deny the license request.

Walter Jackson, Quilute Tribe, and **Tony Foster**, Vice Chairman of the Tribal Council, reported they too were in support of the Puyallup Tribe. Their main concern was the fact that there's a government-to-government agreement through the compacts, and they expressed their concern about the relationships. They advised they would stand behind the tribes that are showing their support and concern over this matter.

Commissioner Ludwig addressed the comments made by Mr. Peterson, and affirmed he was totally sympathetic, he would agree that the state of Washington should not bring a "casino" on or near reservation land to compete with them. He noted however, that we are not talking about a casino -- it is a card room, and there's a big difference between the two activities. The Freddie's at Fife, Auburn, Renton or Everett look like card rooms and cocktail lounges. By continually calling them casinos, a perception is created that comes back to cause other problems.

Mr. Tull said from the viewpoint of the applicant this is an extremely difficult situation. As a general proposition, the laws of the state of Washington apply on fee lands and his clients are on fee lands. The land settlement agreement made it very clear that the tribe was not asserting regulatory jurisdiction on fee lands. There may be a dispute as to how the evolution of card rooms affects the tribes' rights or the tribes' arguments as to the types of facilities, and the numbers and places of facilities that it wishes to operate. Mr. Tull advised that his clients are not

here to suggest that the Puyallup Tribe shouldn't seek to expand or change its gaming operations. His clients believe that the synergy of facilities that are different but nearby, will tend to draw additional players. He believed the argument this would open would be a testament to the importance of increased competitive effort. This Commission when issuing a card room license, is restricted by state law from attempting to limit the number of licenses. State statute is very clear about that. The person who happens to own fee land, is entitled, if they meet the standards to be licensed. The tribe, he believed is probably entitled to come forward to this Commission and get as many house-banked card rooms with the same betting limits, the same controls and proceedings, and compete if they wish to on that level. They've had that discussion in some other quarters over the past two or three years. **Chair McLaughlin** acknowledged there has been some interest in it.

Mr. Tull believed his clients have done what they're supposed to do under the laws of the state and under the laws of this nation. They believe they should now be given the authority to proceed. The invocation of the mediation process is appropriate. He asked the Commission to approve the issuance of the license after appropriate consultation, in accordance with state law.

Commissioner Parker asked Mr. Tull if he believed there are legal grounds for the Puyallup Tribe to sue Freddie's Club in this situation. **Mr. Tull** responded that he did not think they had a regulatory jurisdiction that would allow them to take police power action. On the civil side, anyone can sue anybody, any time for anything. He suspected that if mediation followed by arbitration followed by litigation resulted in a ruling that the state can't issue this license, then the Tribe would probably join a lawsuit as it goes along. **Mr. Madurri** reported that he had just heard about this concern a week ago. He stated that he had talked to the City of Fife, who said they got a call six months ago regarding the application the restaurant, bar and E-5 enhanced card room permit. He said the city informed the Tribe of the related activities. Mr. Madurri also noted there already is another card rooms in Fife. **Dave Bemmis** noted this is the fourth Freddie's Club he has built. Over a year ago he met with the City Council of Fife and dealt with several issues over a three or four month period. He said he was shocked to get this information last week and advised that his employees are frightened. They had no intention of hurting the Puyallup Tribe.

Mr. DelaSantos responded that this applicant's ignorance of the laws that are applicable to the Indian Reservations is not the Tribe's fault. He also noted that Mr. Tull was the Chair of the Commission at the time their compact was approved. Mr. DelaSantos suggested the items just raised by Mr. Tull should have been raised at the time the compact was negotiated. He emphasized that we have an agreement, and we are bound to follow said agreement. He addressed the issue of jurisdiction, and stressed that the Puyallup Tribe has never waived jurisdiction over Indian people.

Chair McLaughlin asked if there were any further public comments, there were none and at 4:10 p.m., she announced the Commission would go into a thirty-minute Executive Session to discuss this topic. Chair McLaughlin recalled the session at 4:45 p.m., and noted the Commission has before them the licensing of Freddie's Club of Fife.

Commissioner Orr made a motion seconded by **Commissioner Forrest** to approve the license for Freddie's Club of Fife as a house-banked public card room authorized to operate up to 15 tables with a maximum \$25 betting limit. *Motion taken; the motion passed with five aye votes.*

Chair McLaughlin emphasized this has been a very serious issue for the Commission, and they didn't take it lightly. She explained the Commission has enjoyed a wonderful relationship with all of the compacted Indian tribes. Chair McLaughlin noted the Commission recognizes there are concerns, and realizes that the tribes supporting the Puyallup's in this are concerned. While the Commission doesn't want to lose that relationship, they are aware the correspondence from Chairman Herman Dillon has invoked the dispute resolution process. The Commissioners are therefore directing staff to respond appropriately. She emphasized that the Commission has limited jurisdiction – the Commission can't say an enhanced card room can't be on a piece of property unless that jurisdiction has banned enhanced card rooms in their area.

10. OTHER BUSINESS/GENERAL DISCUSSION/COMMENTS FROM THE PUBLIC/ADJOURNMENT:

Chair McLaughlin called for comments from the public. There were no additional business items addressed. At 5:10 p.m. **Chair McLaughlin** declared the meeting adjourned until 9.30 a.m. November 17, 2000.

**COMMISSION MEETING
FRIDAY, NOVEMBER 17, 2000
DRAFT MINUTES**

Chair McLaughlin called the meeting to order at 9:30 a.m., at the Shilo Inn located in Ocean Shores. She announced that Commissioner Parker was unable to be present due to urgent business matters. The following attendees were present:

MEMBERS PRESENT:

**LIZ McLAUGHLIN, CHAIRPERSON;
COMMISSIONER and VICE CHAIR, GEORGE ORR;
COMMISSIONER CURTIS LUDWIG;
COMMISSIONER MARSHALL FORREST;
EX OFFICIO MEMBER, SENATOR MARGARITA PRENTICE;
EX OFFICIO MEMBER REPRESENTATIVE JIM CLEMENTS;**

OTHERS PRESENT:

**BEN BISHOP, Executive Director;
ROBERT BERG, Deputy Director, Operations;
ED FLEISHER, Deputy Director, Policy & Government Affairs;
CALLY CASS-HEALY, Assistant Director, Field Operations;
DERRY FRIES, Assistant Director, Licensing Operations;
AMY PATJENS, Manager, Communications & Legal Dept.;
SHERRI WINSLOW, Special Assistant
JERRY ACKERMAN, Assistant Attorney General;
SHIRLEY CORBETT, Executive Assistant**

1. MINUTES – October 12 and 13, 2000:

Commissioner Orr made a motion seconded by **Commissioner Forrest** to adopt the minutes of the October 12 and 13, 2000, meeting as presented. *Vote taken; motion carried with four aye votes.*

Rules Up For Final Action

2. Reporting Changes in Management.

WAC 230-04-330 – Change in management.

Ms. Patjens noted this rule covers when an organization is required to notify the Commission about a change of management and applies both to commercial operators and nonprofits. The rule was first reviewed several months ago when staff looked at streamlining some of the Bingo rules. There were questions at the September Commission meeting from commercial operators who wanted to know if they hired a floor supervisor, sometimes called pit bosses, if they were going to be required to separately report this. Ms. Patjens advised that was not the intent of the rule and staff added language to clarify that. Last month, staff asked that the rule be held over because they wanted to have more review time. A change was made to delete subsection 4, the section dealing with special investigative fees. She clarified that the Commission always has the ability to ask for additional investigative fees, as set forth in statute as well as in different WACs.

Ms. Patjens said that Delores Chiechi from the Recreational Gaming Association sent drafts of the latest version to some of her members. They asked if we would be charging a special investigative fee, if, for example, a business promoted someone who had been a floor supervisor to shift manager or another higher position. Ms. Patjens emphasized that is not the intent. The more staff looked at the rule, they felt we really didn't need the language in subsection 4 at all because that language exists in another rule. Ms. Patjens affirmed the rule is up for final action.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to adopt WAC 230-04-330.

Chair McLaughlin opened the meeting for public comment. **Delores Chiechi**, Executive Director, RGA, said she appreciated staff's review of the rule change and making the adjustment. Ms. Chiechi noted the RGA agreed with the proposed changes.

With no further public comments, **Chair McLaughlin** closed the discussion. *Vote taken; motion carried with four aye votes.*

3. **Bingo Net Return Task Force Rules**

WAC 230-04-260; WAC 230-08-255; WAC 230-20-059; WAC 230-20-062; WAC 230-30-052; WAC 230-50-010; WAC 230-02-362; WAC 230-02-364; WAC 230-02-366; WAC 230-02-530; WAC 230-02-535; WAC 230-02-540; WAC 230-20-058; and WAC 230-20-060.

Sherri Winslow, Special Assistant, noted the net return task force rules are up for final action; however, staff is requesting that some of the rules be held over until the next Commission meeting. Discussions continued through yesterday regarding the net income options and their related impacts to licensees. Ms. Winslow said she would only present the significant progress rule, as proposed, along with any amendments. Director Bishop would then provide the latest proposal regarding net income requirements for charities and nonprofits.

WAC 230-08-255 is the significant progress rule with the changes that were recommended to make it easier for staff and licensees to test for significant progress. Actual percentages used to calculate the significant progress remain the same; however, if an organization doesn't keep gambling income separate from non-gambling income, additional testing of functional expense will be required. One final change was made to recognize programs that are primarily operated with non-depreciable assets.

Commissioner Forrest made a motion seconded by **Commissioner Orr** to adopt WAC 230-08-255. **Chair McLaughlin** opened the meeting for public comment. No one commented and the public hearing was closed. *Vote taken; motion passed with four aye votes.*

Director Bishop noted that after the meeting last month, there was a lot of discussion regarding Bingo net income. Staff was asked to look at this situation and to make a proposal at this month's meeting. Staff determined there were four objectives the Commission was trying to achieve with the net income requirements for Bingo. Those objectives were: to simplify the measurement process, focus on the dollars available for charitable nonprofit purposes rather than other factors, allow flexibility for organizations to operate Bingo without unnecessary regulatory interference. That any regulation should discourage predatory practices; and that any sanctions that would be applied in this situation would be tough but fair. Staff believed there should be no tolerance for failure to meet any requirements set, especially those for losses in operating Bingo. Finally, a permanent fix is needed to avoid annual emergencies.

Director Bishop reported that staff developed some assumptions and discussed them yesterday at the charitable meeting. While there was agreement on some of the assumptions, there were also some exceptions. Director Bishop highlighted yesterday's discussion. He noted that competition for Bingo income is impacted not only by increases in the number of competitors – other Bingo games or other types of gambling, but also other entertainment functions. The entertainment dollars spent on new activities reduce the size of the Bingo pie, while new Bingo competitors impact how the pie is divided. To a large degree, the organizations operating Bingo really only compete for people that want to play Bingo. Director Bishop affirmed there are economies of scale to Bingo games -- the larger games can achieve a higher rate of return and smaller gains, and should be held to a higher standard than smaller games. He noted there was a lot of discussion on this assumption. The industry's own statistics show that in

reality the smaller games have a tendency to operate more efficiently – which, in essence, goes against a lot of economic theory. Director Bishop noted that as other areas of entertainment expand, the Bingo market is shrinking.

Director Bishop indicated the fourth assumption would be very important as we look at the rates of return being proposed. The proposed rates will be the lowest return tolerated rather than the minimum expected. There is an expectation that all the organizations are trying to return as much as they can for their organizations. The fifth assumption addressed the measurement of expenses and profit from Bingo games, and should include all of the activities conducted in conjunction with the games. This would include the Bingo game, the snack bar, Punchboard and Pull-tabs, the sale of Daubers, or any other activities.

The sixth assumption establishes that any net income regulation should be fair. Director Bishop affirmed there was a lot of discussion on this assumption. Based on the comments, he concluded that under a definition of fairness, it might be impossible to draft a rule that would be fair in everybody's eyes. Local taxes are a big issue - the tax rates are different; they're set by the jurisdiction themselves and the licensees don't have any control over them. Economic conditions are different in different areas. The rate of rent is higher in one area than another. The wages are different in different areas, etc. An assumption was added yesterday, noting that the business of Bingo is cyclic. There are certain quarters or periods of the year where the business and income picks up, and there are other times when it slacks off. The players tend to play Bingo in the winter months and do other things during the summer.

Director Bishop advised that the rule staff is proposing changes in the measurement amount from 'net return' to 'net income'. It removes the credit for local taxes. While this goes against the majority of comments expressed by participants of the study group, staff feels this would eliminate the confusion regarding how much funding is available from the operation of Bingo, the associated activities, and other programs. **Director Bishop** noted the current rule before the Commission deals with 'net income versus net return'. The measurement base is changed from 'Bingo gross receipts only' to 'gross receipts of Bingo, Punchboards and Pull-tabs'. Previously, when someone had to return 16 percent, they were taking the net income from all of those activities and only measuring it against their Bingo gross receipts. Staff is now recommending that at least Punchboards and Pull-tabs – the two major gambling activities conducted – would be used as the base.

Director Bishop added that the required rate of net income is based on a graduated federal income tax type of structure. Once one crosses a threshold, they would be taxed at a new rate, but only on the dollars above that threshold. The rate remains steady for all income below the first threshold. He believed that given the economies of scale (although there are arguments regarding that), this is the only fair way of doing any type of regulation. The proposal deletes the concept of measurement periods. Staff is proposing that everything be based on a quarterly basis. The annual requirement will be the measurement of the most recent four quarters on a continuous basis.

Director Bishop noted the proposal also removes all sanctions related to the restriction of gross receipts. There won't be restrictions on being able to upgrade if one doesn't make their requirement. Establishments can get as big as they want, as fast as they want; they just have to make sure they meet the requirements. Staff is proposing that the sanctions for not meeting the requirements be tough on the issue but tender on the organizations. Staff proposes that at this point, there will be no sanctions other than the organization acknowledge that they are in trouble and that they need to have a plan to fix the problem. If they're out of compliance in any two consecutive quarters, they will immediately put an action plan in place and notify the Commission of what they're doing to correct the situation. There would be no sanctions other than to do the planning and send a notice. Director Bishop advised that the sanction for failure to meet the minimum net income requirements for four consecutive quarters calls for the Commission to start administrative actions to revoke the license. Failure to maintain a positive cash flow in any two consecutive quarters allows for the director to start action to summarily suspend the license.

Commissioner Ludwig asked what Director Bishop meant by "start action." **Director Bishop** said a summary suspension, in essence, would take a period of about a week. It would be quite fast in this case. Staff believes that the Board of Directors for any such organization should be on top of such a situation and should start taking drastic steps as soon as they know they are having difficulties.

Commissioner McLaughlin inquired about organizations that are not currently returning anything to their respective charities, and if they would still have two quarters before the Commission started doing anything and

before they presented their plan to fix their program. **Director Bishop** responded that there would be a transitional period. Licensees are operating under the current rule, and the agency couldn't retroactively apply the new standards. When the rule becomes effective, the program would start at that point forward. There's no intent to be retroactive.

Commissioner McLaughlin asked how many organizations were in the red. **Director Bishop** said the new regulation proposes regulating the top 47 licensees. Out of that group, for the four quarters that ended June 30, 2000, there were seven organizations that had net operating losses. One has been summarily suspended under the current rule and is no longer conducting Bingo. In the current rule, if someone had a net operating loss for four quarters, the agency would start looking at them -- if they made a net income in the fifth quarter, the rule didn't allow a summary suspension of their license. They were allowed to go forward under the current rule that downgraded their license. **Director Bishop** noted that many of the licensees have a December 31 year-end. The first quarter is always the best quarter, so we experienced organizations that would lose money in three-quarters of the year but would make a small profit in the first quarter of the year.

Director Bishop cautioned that as in any regulation program, when drastic changes are being made, there needs to be variances on when the new restrictions are placed on people. It is necessary to have a means for people to have some period to come into compliance. Therefore, two variances are allowed under the proposed rule -- if an organization meets at least 90 percent of what they were supposed to, they could appear before the Commission and present their plan. The Commission, then, has the option of granting that variance. The other variance has to do with long-term obligations. Many of the organizations have entered into long-term leases. Those leases probably looked very good at the time when Bingo was growing. Now that it is declining, they don't, and many of them are obligated for five years. Organizations that can demonstrate they have significant long-term fixed obligations that are related to operating a Bingo game, may come before the Commission anytime during 2001, and ask for a variance based strictly on their current lease costs for the building. This variance gives the licensee two years to get with the landlord or to take some other action. **Director Bishop** clarified that licensees cannot enter into a new lease and then ask for a variance -- this has to be an existing lease.

Director Bishop advised the proposed rule repeals 11 rules and amends two others. This melds with the Governor's program to reduce unnecessary WAC rules. After the Commission meeting yesterday, there was a lot of discussion on taxes and fairness, and a suggestion that while this proposal went a long way to getting to where the Commissioners wanted to go, it still did not get there completely. Based on that comment, Deputy Director Fleisher proposed some new language. The new proposal, an alternative, addressed Paragraph 1 of the rule, which currently reads, "a Bingo licensee shall achieve at least the following amount of net income and make such income available for its stated purposes during the calendar quarter." That would be the sentence immediately above the rate schedule sentence which would read, "a bingo licensee shall provide at least the following amount of funds from its Bingo operation for its stated purpose during the calendar quarter." This addressed the money that is actually available coming from the operation. In that case, recovery of amortization or depreciation expenses would provide funds outside of the Bingo net income requirement. It also leaves it open for any other monies one can come up with from any other purpose. The key is that the licensee has to return a certain amount of money from the operation of the activity, rather than net income, which is not necessarily money.

Director Bishop read: "A Bingo licensee shall provide at least the following amount of funds from its Bingo operation for its stated purpose during each calendar quarter." To make that work, changes will have to be made to other portions of the rule. Subsection 2, containing a definition of net income, would no longer be required. The definition of net income exists in other places, and the definition of "Bingo operation" would need to be added. The intent is to remove the concept of net income throughout the rest of the rule and replace it with language that requires money be returned to the organization. **Director Bishop** asked the Commissioners for discussion on this issue, and the to direct staff according to their wishes. **Commissioner Ludwig** believed this could be an amendment to the proposed rule. **Mr. Fleisher** affirmed this is just another alternative -- the rule could be finally adopted today, however, staff is asking that the Commissioners provide direction, so that staff can provide an alternative for adoption in January. **Director Bishop** noted this would also allow staff some time to make sure the licensees have an opportunity to review the proposal.

Commissioner Forrest said he would be prepared to make a motion that staff be directed to refine and put this in final form – to make the necessary adjustments in other parts of the rule, with a view that they could be in a position to adopt it at the January meeting. Commissioner Forrest urged getting the principle settled, focusing on the bottom line – can these games produce a reasonable amount of cash to support their charitable activities? If they can, they ought to be in business. If they can't, they shouldn't be allowed to continue.

Commissioner Forrest made a motion seconded by **Commissioner Orr** directing staff to take the principles enunciated by Director Bishop and incorporate them in a final rule draft for consideration at the next meeting.

Commissioner Orr expressed concern that waiting until the next meeting, means next year, which puts everybody in another accounting cycle.

Discussion was initiated on how facility uses are charged to the organization, especially if the licensee is able to rent the hall out for various functions. **Mr. Fleisher** affirmed all of the revenues would count as income. **Director Bishop** clarified that if half of the building is used for their program, only that portion which has been set aside for playing Bingo will be a cost of the Bingo.

Commissioner Forrest noted that in discussions yesterday, the biggest concern seemed to be the question of not giving local taxes some special consideration. He indicated that it wouldn't make any difference now if we are focusing on what cash is available for the charitable purpose. He reminded the audience that point four in Director Bishop's memo is the key – and is this the lowest tolerable level? Hopefully, everyone will all be substantially above, but if they can't make this level, then we don't think that they should be in business. Commissioner Forrest affirmed it's going to be painful, and some charitable games may have to close. He emphasized this is not a question of fairness. This isn't a competition for who has the best game. This is a question of any game regardless of their background, problems, or taxes, being able to generate a reasonable level of money for their charitable purpose. Hopefully, the analysis suggests that most of the games that are surviving now will survive under this standard. The establishments that have a lower tax burden are going to generate a little more money – but the bottom line is that the agency is not trying to equalize the game between two charities in different jurisdictions. The Commission is trying to set the floor that any charity has to produce some money for the charitable purpose.

Commissioner Forrest acknowledged the agency was aiming to be fair, in the sense that any game has to produce minimum revenue to be in business. Hopefully, everybody would be comfortably above that level, and those games that are in a jurisdiction with lower taxes will be even more comfortably above. Using an extreme example, if a game is just able to pay its taxes, and it doesn't generate any money for its charity, it should be out of business because it's not advancing a charitable purpose -- all it's doing is being a tax collector for the municipality. The game isn't to support the municipality; the game is to support charity. Commissioner Forrest believed this proposal fairly implements the legislative purpose – it is a privilege to have Bingo to support charitable activities, and there has to be some minimum amount of cash that goes to the charitable activities to justify the operation of the game.

Chair McLaughlin opened the meeting for public testimony.

Nick Peck, Administrative Director, Silver Buckle Rodeo Club in Vancouver, advised that he is personally supportive of the position the Commissioners and staff are taking. Mr. Peck referred to Commissioner Forrest's comments regarding the add-back of tax. Mr. Peck requested that the Commission take taxes into consideration regarding the penalty phase of the negative cash flow situation. When looking at the net return, the portion of those taxes that are in some form or another, a community contribution, should be considered part of the organization's percentage rate in the calculation. However, it should not in any way influence the judgment call on the negative cash flow situation. When a game was returning zero dollars or negative dollars to its stated purposes, but is still managing to pay its taxes, that would still be a penalty: close the doors. But when they are looking at comparing or assessing the general standard of performance of money towards the stated purposes, those taxes should be considered a part of the package and there shouldn't be a penalty phase when those taxes are taken out of the equation. Mr. Peck clarified his argument is that there shouldn't be a penalty sanction invoked for the administrative action at that level, but that when it comes down to the zero negative cash flow, the tax is not in the equation at all. **Commissioner Forrest** asked if rather than having a rate that's too high and then deviate from that rate, shouldn't we set the rate lower in the beginning. Then licensees have straightforward simplicity and those with

lower taxes get a greater return to the good. If the original rate is livable, Commissioner Forrest couldn't see how anyone is prejudiced. Once the original level is established, then no one would have any cause for complaint.

Don Kaufman, General Managing Director, Big Brother/Sisters, Spokane expressed concern. He believed the economy of scale issue is an important one. He noted that in a declining marketplace, a large game is at a definite disadvantage, and that a smaller game that uses their facility marginally (because there may be a club that has alcohol) and sells Pull-tabs seven days a week, would be affected a lot less than a charitable game that runs Bingo strictly three days a week in a facility.

Mr. Kaufman addressed Assumption #6, and the intent to start with as fair a process as possible. He said that at some point, one must draw the line and say that the game will no longer exist. He gave as an example, if there are two games in the same county, and one has half the tax base of the other one, one game has a distinct advantage. They can be operating at the same level, but one will have more net income when they hit the bottom line. Is that fair? Mr. Kaufman didn't think so, because one can't affect the tax base. Mr. Kaufman noted that one of his chief competitors is going to pay half the taxes he's paying. Mr. Kaufman stressed that now is the time to address this issue of fairness.

Jean Turner, Spokane Valley Foundation, said she is Mr. Kaufman's competitor, and affirmed they pay the same taxes Mr. Kaufman does, just not as much. Their license class is lower, but yet they still pay the taxes. She explained her organization provides services for the elderly in the Valley, and they plan to continue their services even though they have decreased some of the services. Ms. Turner recommended adopting Amendment #2. **Chair McLaughlin** asked where their game fell on the list. Ms. Turner said it is number 34, and affirmed the organization received a letter to decrease their license class from an I to a G. They have appealed that because decreasing from an I to a G would not give them any revenue, they would have to stop operating. She noted the organization is looking at tweaking the game, trying to make the best deal possible for the customers as well as the organization. They are considering discontinuing their kitchen services and may even be leasing it out. That would make a big difference in their bottom line, in addition to being able to add in their taxes.

David Chipway, President, Northshore Youth Soccer, said he was given the task to look at their Bingo operation in some detail and to try to make it profitable. He concurred the Commission has much to think about, and it's a matter of where they draw the line. He noted that his organization is Number 10. Under the old rules they weren't making it, and if they don't make it under the proposed rules, their board will take them out of business. They are not going to let the Bingo operation jeopardize their other income streams. Mr. Chipway supported Director Bishop's proposal wholeheartedly. He advised that he could wholeheartedly support the change requiring Bingo operation to return money to the organization. The question is, where do you put the floor? With the taxes out of the equation, the proposal put forth in Alternative #3 is too high. The Director's proposal and Alternative #3 as presented would require the taxes to go back in. He proposed that the Commission seriously consider the Director's Alternative #3, with returns at the floor level in Alternative #2, and with the taxes out of the equation. **Director Bishop** said he had already given that proposal some consideration.

Chair McLaughlin asked for additional comments from the public, there were none and she closed the public hearing. She then called for discussion from the Commissioners and there was nothing further. Vote taken; motion carried with four aye votes.

Commissioner Forrest asked that staff mail the revised rule to the affected licensees so they could apply the percentages to their operation. He noted the issue is not foreclosed because there has not been great debate on what the percentage should be. He indicated Mr. Chipway showed very clearly that we could deal with the problem either way, and a simpler way is by adjusting the percentage rather than adjusting for taxes. He urged anyone whose games are affected to write to the Commission. **Director Bishop** affirmed staff would clean up the statistics and mail the proposal to all the applicable Bingo licensees.

4. New Marketing Schemes for Pull-tabs **WAC 230-30-033; WAC 230-30-036**

Sherri Winslow reported that the new marketing opportunities for Pull-tabs are recommended under the event and strip-ticket games. Although these rules are up for final action, staff is requesting they be carried over due to issues

discussed at the study session. The Event Pull-tab Series, WAC 230-30-033, are games with a predetermined number of pull-tabs allowing a player an opportunity to advance to another round with a secondary element of chance. There are two different methods of play, which is why staff is considering splitting this rule into two rules. One of the methods of play is an event that is at a Bingo game, and the other method is similar to a seal-card game that can be played at any licensed establishment. Staff will work on this rule for the next Commission meeting.

Chair McLaughlin inquired why the agency should spend so much time and resources on a game that appears to have minimal interest. **Ms. Winslow** noted there has been a lot of interest in the Event Pull-tab Series, but there hasn't been a lot of excitement regarding the Strip Ticket. **Ms. Winslow** believed the lack of interest might in part be due to a lack of knowledge about the way that the game is played. She advised that staff had an opportunity to visit a manufacturer of these types of games since the last meeting. They learned that the manufacturing process is significantly different than the way that staff had drafted the rule. Because of that, significant changes to the rule or changes to the manufacturing process are necessary. The manufacturers expressed concerns that it may become cost prohibitive to set up a game the way the rule drafted. **Chair McLaughlin** asked if this could actually change how Pull-tabs are manufactured/played in this state. **Ms. Winslow** affirmed that some staff believed so. She advised there is enough interest, and this might be an alternative for the operators to look at other options for different types of Pull-tab games.

Commissioner Forrest offered support, if staff can resolve the manufacturing demands within the structure of the Commission rules. He noted that even if there's not an overwhelming demand, it might well be that after a year or two, if someone is doing well with the game, it would become more popular. He suggested they not abandon it until they've given it every effort. **Ms. Winslow** advised that the manufacturers who currently manufacture the games indicated there was a significant interest in them when they first came out in other market areas, and then the interest died. She noted that often times, when something is new, there is a fair amount of interest, and then it seems to die down. Sometimes it bleeds the other types of activities -- for example, if a new Pull-tab game is released, there's a drop in the other Pull-tab game sales. **Director Bishop** reported he had concerns on the integrity of the activity. Changing this, changes the existing structure for Pull-tabs. He personally believed that Washington has the best system in the world as far as making sure that the game is fair and that it is truly random. He personally didn't think the game was worth the work that will be involved in securing the integrity purposes. **Chair McLaughlin** concurred, noting that she didn't see a big interest this activity from the licensees yesterday, which lead her to question whether it was worth the effort.

Ms. Winslow responded that staff is requesting the two rules be continued until next month so they can look into the control issues and then make any necessary amendments. She noted that after discussions with the manufacturers, staff realized they needed to make some fairly significant changes to the Event Ticket Rule. Staff wanted to have discussion at this meeting, to make sure that the licensees were okay with the changes, and then come forward at the next meeting with a final draft. **Commissioner Forrest** asked if the intent is to postpone adopting the whole set of new rules, to avoid adopting them individually. **Ms. Winslow** concurred. **Mr. Ackerman**, Assistant Attorney General, affirmed the Chair could simply direct the rule be placed on the next meeting agenda.

Chair McLaughlin opened the meeting for public testimony. There was no input, and the public hearing was closed. Chair McLaughlin deemed the rule package would be held over until the January meeting.

5. **House Rules for Bingo:**
WAC 230-20-010

Amy Patjens advised this rule is up for final action today. There were two situations earlier this year with Bingo games that are called Fast Pick or Pick Eight games. The Bingo operators had house rules that they would not pay a Bingo if the person had marked through a number. The concern was that the Bingo operator was able to read what the Bingo number was. This rule simply clarifies that if a Bingo is valid, the operator must pay the prize for the game and that disputes would be decided in favor of the player if the Bingo were in fact valid. Staff recommended adoption. **Chair McLaughlin** opened the issue for public testimony, there was none, and the public testimony was closed.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to adopt WAC 230-20-010. *Vote taken; the motion passed with four aye votes.*

6. **New Agenda Item**

Emergency Rule Filing – Licensing Fees:

WAC 230-04-202; WAC 230-04-203; WAC 230-04-204

Amy Patjens, reminded the Commissioners that at the end of last year, the Commission passed rules to increase license fees, and those changes became effective December 31st. The rules that were passed also established the fees for the house-banked card rooms.

Ms. Patjens noted that few months ago, Deputy Director, Ed Fleisher, provided a staff report about Initiative 722, an initiative to make taxes that were adopted between July 2, 1999 through December 31, 1999 invalid. Taxes are defined as including license fees. The initiative says that taxes that were adopted during that time period would be refunded. Since Initiative 722 passed, there has been a legal challenge filed. Staff feels there is now some uncertainty, because of that, about what the proper legal fees are. This is confusing for licensees as well as for staff. Staff is requesting these rules be passed as an emergency to reaffirm that there were fees that were passed last year. This would not change the current fees; they would be the same as what the agency has been assessing during the last 11 months.

Amy Patjens explained that based on the Administrative Procedures Act, emergency rules are only valid for 120 days. Therefore, the next item on the agenda will be to file these rules so that after 120 days, they can be adopted on a permanent basis – basically beyond the 120 days. She emphasized that if Initiative 722 is found to be constitutional, the agency would be refunding any fees that had gone into effect from December 31 until today. Staff recommend final action on the rules that are 6A, 6B, and 6C, and that they be filed as an emergency to become effective immediately after they are filed with the Code Reviser's Office.

Commissioner Ludwig made a motion seconded by Commissioner Orr to adopt the proposed emergency rules in 6A, 6B and 6C for the reasons explained by Ms. Patjens.

Chair McLaughlin called for discussion; there was none, and she opened the meeting for a public hearing. There were no comments, and the hearing was closed. *Vote taken; motion carried with four aye votes.*

7. **New Agenda Item**

Licensing Fees:

WAC-230-04-202; WAC 230-04-203; WAC 230-04-204

Ms. Patjens explained this is simply a request to file the rule so that staff can begin the normal adoption process.

Commissioner Ludwig made a motion seconded by Commissioner Forrest to file the proposed rules in Items 7A, 7B and 7C.

Chair McLaughlin opened the meeting for public comment, there was none, and the public hearing was closed. *Vote taken; motion carried with four aye votes.*

8. **(Previous Agenda Item #6)**

Tracking Card Room Employees

Amy Patjens reported these two rules are also up for discussion and possible filing. These rules deal with the process for when a card room employee begins working, transferring to another location, or is no longer working.

The first rule decreases the amount of time the card room must wait before they can begin to employ someone as a card room employee from 15 days to 10 days. She recalled that some time back, the agency decreased that time from 20 days down to 15 days. The waiting period allows staff to conduct an initial criminal history check and to get some initial information back. The fingerprinting results takes considerably longer.

The reason staff has been able to decrease the amount of time so significantly from 20 days to 10 days, is because of an improvement to the automated process in the Licensing Unit. The bottom line is that the agency is still able to meet its goal of keeping gambling legal and honest through a more efficient process. This is also good for the card rooms because they are able to put people to work faster.

The second rule is why this rules package was started. Staff had some issues over whether they even need to track when a card room employee is going from one location to another, or whether they should just say it's good enough to know that the employee has a card room license and can work anywhere. Under the proposed rule, the notice would be made on one form, instead of the employer notifying the agency and the card room employee. This could be set up to be compatible with a fax and computer system. When the employer and employee completed and signed the form, it would immediately (via fax or possibly computer) come to the staff, and the agency records would be automatically updated. Currently, with so many card room employees and so many transfers or people who want to work at several places, it is a big burden to take the transfer application and to physically enter the data in the computer system. The rule provides that this data must be in a format provided by the Commission, and the agency will therefore require the proper format so that the interfacing can occur. **Chair McLaughlin** asked if staff would simply be able to scan the ballot. Ms. Patjens affirmed. **Mr. Fleisher** advised that it scan the data and go directly into the system, which will save a lot of staff time.

Commissioner Ludwig made a motion seconded by **Commissioner Orr** to file the proposed rules, which are now 8A, and 8B, (formerly printed on the handout as 6A and 6B).

Chair McLaughlin opened the item for public testimony. There was none, and the public hearing was closed. *Vote taken; motion passed with four aye votes.*

9. Other Business/General Discussion/ Comments from the Public

Chair McLaughlin called for any other comments or business item from the public. There were none.

10. Adjournment:

With no further business, a motion for adjournment prevailed at 11:00 a.m.

Minutes submitted to the Commission for approval by:

Shirley A. Corbett
Executive Assistant